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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re J.F. et al., Persons Coming Under the  
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

C.N.,

Defendant and Appellant.

E048261

(Super.Ct.No. INJ018540)

OPINION

APPEAL from the Superior Court of Riverside County. Christopher J. Sheldon,  
Judge. Affirmed.

Julie E. Braden, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Pamela J. Walls, County Counsel, and Sophia H. Choi, Deputy County Counsel,  
for Plaintiff and Respondent.

Konrad S. Lee, under appointment by the Court of Appeal, for Minors.

C.N., the mother of Jas.F., Ant. F., Arl.F., and Jes.F., appeals from a judgment terminating her parental rights to the children at a selection and implementation hearing. (Welf. & Inst. Code,<sup>1</sup> § 366.26.) The four children were removed in one dependency proceeding, and their half-sibling Jo.F.,<sup>2</sup> born a year and a half later, was removed when he tested positive for methamphetamine at the time of delivery. Mother visited regularly during the dependency, and finally completed her court-ordered treatment program shortly before the selection and implementation hearing, after relapsing and testing positive for drugs throughout the reunification period.

On appeal, mother claims the judgment terminating her parental rights to the four older children should be reversed because (a) she maintained a beneficial parent-child relationship with the children, and (b) adoption of the four older children by their paternal aunt would substantially interfere with their sibling relationship to Jo.F., who was placed with a maternal uncle. We affirm.

## BACKGROUND

On October 30, 2006, Jas. (then age four), Ant. (age two), and Arl. (age one), were detained after mother tested positive for methamphetamine use. The father had refused to test, and the parents routinely left their children in the care of the paternal grandparents without provision for their support, being gone for several days at a time. At the time of

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code, unless otherwise stated.

<sup>2</sup> Mother was granted additional reunification services with respect to Jo.F., so he is not a subject of this appeal.

the detention, mother was eight months pregnant with her fourth child. On November 1, 2006, a dependency petition, alleging neglect and failure to supervise (§ 300, subd. (b)) was filed as to the three children, alleging a substantial risk of harm due to failure to protect. Specifically, the neglect related to the parents' substance abuse, incidents of domestic violence, and failing to provide for the children.

In November 2006, mother gave birth to Jes. Both mother and child tested positive for methamphetamines, so Jes. was also detained, and a dependency petition based on the same grounds as the older children was filed. Jes. was placed in the same foster home as his older siblings. A true finding on the petitions was made on January 25, 2007, and the children were found to be dependents. (§ 300, subd. (b).) The children were placed with a paternal aunt and the parents were ordered to comply with reunification services.

By the date of the 12-month review hearing, mother and father had participated in their treatment programs and father's visits were unsupervised. At the 12-month review hearing held on January 3, 2008, the court found that the extent of progress was adequate but incomplete, and ordered an additional six months of services. Additionally, the court authorized unsupervised overnight and weekend visits. The progress was short-lived, however. On January 23, 2008, mother tested positive for amphetamines, so Department of Public Social Services (DPSS) requested that the visitation order be modified to provide for supervised, rather than unsupervised, visits.

In March 2008, mother gave birth to her fifth child, Jo.F., and both mother and child tested positive for amphetamines. A new dependency petition was filed as to Jo.F.

asserting neglect and failure to protect relating to mother's drug use, her failure to benefit from services, her criminal history for theft, and the unknown whereabouts of the child's alleged father.<sup>3</sup> This child also was detained and placed in foster care after jurisdiction was established.

On July 1, 2008, the court conducted a permanency hearing/18-month status review. The court considered the report submitted by DPSS indicating mother had tested positive for amphetamines on seven occasions since March 19, 2008, and admitted using methamphetamine once. On more than one occasion mother had appeared at the Family Preservation Court center with bruises on her arms, admitted she used methamphetamine for its effects during sex, and indicated she liked it when the father became aggressive with her. The court terminated reunification services and set a hearing to select and implement a permanent plan of adoption.

On April 9, 2009, the court denied mother's request for a change of a prior court order (§ 388 [Judicial Council form JV-180]), in which she sought reinstatement of reunification services as to the four older children, but ordered continued reunification services as to Jo.F., the youngest child. That same date, the court found that Jas., Ant., Arl, and Jes. were likely to be adopted, and terminated parental rights. Mother appealed.

## DISCUSSION

### **a. Standard of Review**

The issues presented on appeal challenge the juvenile court's findings as to two

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<sup>3</sup> Jo.F. is a half-sibling to Jas., Ant., Arl., and Jes., as a result of a one-night fling.

exceptions to the finding of adoptability made at a selection and implementation hearing. On appeal, we apply the substantial evidence standard of review. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.) If there is substantial evidence to support the findings of the juvenile court, we must uphold those findings. (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534.) We do not reevaluate the credibility of the witnesses, reweigh the evidence, or resolve evidentiary conflicts. Rather, we draw all reasonable inferences in support of the findings, and consider the record most favorably to the juvenile court's order. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.)

**b. There is Substantial Evidence to Support the Trial Court's Finding That There Was No Beneficial Parent-Child Relationship.**

In ordering the termination of parental rights, the court acknowledged that Jas. and Ant. may have had a bond with mother, but concluded that maintaining the parent-child relationship would not benefit them. Mother challenges this conclusion.

Section 366.26, subdivision (c)(1), provides that if the court determines, based on the [adoption] assessment and any other relevant evidence, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption, unless one of several statutory exceptions applies. One such exception applies when the court finds a compelling reason for determining that termination would be detrimental to the child because the parents have maintained regular visitation and contact with the child, and the child would benefit from continuing the relationship. (§ 366.26, subd. (c)(1)(B)(i).) The burden is on the parent to establish the existence of the exception. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 252.)

In *In re Autumn H.*, *supra*, 27 Cal.App.4th at page 575, the reviewing court held that the exception created by the predecessor to the current section 366.26, subdivision (c)(1)(B)(i) applied only when the relationship with a natural parent promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. Subsequently, the reviewing court in *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419, agreed with *Autumn H.*, and added that a parent's "frequent and loving contact" with the child was not enough to sustain a finding that the exception would apply, when the parents "had not occupied a parental role in relation to them at any time during their lives."

The "parental role" language has spawned many decisions from appeals where parents argued that the holdings of *Autumn H.* and *Beatrice M.* placed the bar too high. However, decisional law continues to evolve. It is now accepted that a strong and beneficial parent-child relationship might exist despite a lack of day-to-day contact and interaction. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.)

In fact, several decisions have acknowledged it is unreasonable to require the parent of a child who has been removed from parental custody to prove that the child has a "primary attachment" to the parent, or to show the parent and the child have maintained day-to-day contact. (*In re S.B.* (2008) 164 Cal.App.4th 289, 299.) As the court observed in *S.B.*, if that were the standard, the rule would swallow the exception. (*Ibid.*) Instead, the court determines whether the parent has maintained a parental relationship, or an emotionally significant relationship, with the child, through consistent contact and visitation. (*Id.* at pp. 298, 300-301.)

In the present case, the mother maintained regular contact and visits with the children, establishing the first prong of the beneficial parent-child exception. We have more difficulty with the second prong, which requires us to find the child would benefit from continuing the relationship. (§ 366.26, subd. (c)(1)(B)(i).)

At the selection and implementation hearing, mother argued that two of the children expressed a bond with mother, referring to the “delivered service logs.” However, our review of the record fails to show that strong emotional bond was demonstrated at the time the hearing or since the termination of services; while the children appeared comfortable with the parents and happy to see them at visits, the only references to Jas. and Ant.’s close bond with mother appeared in much earlier stages of the dependency, prior to the discontinuation of reunification services.

On the contrary, in the report prepared for the selection and implementation hearing, Jas. and Ant. informed the social worker that they would like to remain in the adoptive home. By that stage, all four children were very bonded with their caregivers. Even if the two children were bonded with mother, this does not show that maintaining the parent child relationship is in their best interests. The beneficial parent-child contact exception may apply if the child has a “substantial, positive emotional attachment” to the parent (*In re S.B.*, *supra*, 164 Cal.App.4th at p. 299), but a termination order is not subject to reversal just because there is “some measure of benefit” in continued contact between parent and child. (*In re Jason J.* (2009) 175 Cal.App.4th 922, 937.)

Here, mother did not occupy a parental role, or demonstrate the existence of a substantial, positive emotional attachment. On this record, mother has not met her

burden of proving that maintaining the parent-child relationship is in the children's best interests. There is substantial evidence to support the trial court's finding.

**c. There is Substantial Evidence to Support the Court's Finding that  
Adoption of the Four Older Children Would Not Substantially Interfere  
With Their Relationship With Mother's Youngest Child.**

Mother argues that the order terminating her parental rights to Jas., Ant., Arl., and Jes. should be reversed because adoption of those children by one relative would interfere with their sibling relationship to their half-sibling, Jo.F., who is placed with another relative. We disagree.

Termination of parental rights may be detrimental to children where "[t]here would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption." (§ 366.26, subd. (c)(1)(B)(v).)

When considering the sibling relationship exception, the concern is the best interests of the child being considered for adoption, not the interests of that child's siblings. (*In re Naomi P.* (2005) 132 Cal.App.4th 808, 822.) However, the siblings' relationship with the child to be adopted is not irrelevant. (*Id.* at p. 823.) Nevertheless, even if adoption would interfere with a strong sibling relationship, the court must weigh



the benefit to the child of continuing the sibling relationship against the benefit the child would receive by gaining a permanent home through adoption. (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at pp. 952-953.) As with the other exceptions to the finding of adoptability the juvenile court examines the sibling bond exception in the context of the child's best interests. (*In re Megan S.*, *supra*, 104 Cal.App.4th at p. 253.)

Here, the four older children have been placed together throughout their dependency. The youngest child, half-sibling Jo.F., was born in 2008, a year and a half after the initial dependency was established. He was placed in the home of the maternal uncle at the mother's request. He has never lived in the same home with his siblings, although he has visits with his siblings.

Because of the separate placements, Jo.F. has not shared significant common experiences nor does he have existing close and strong bonds with his half-siblings. While his older siblings showed affection for him at visits, this does not establish a "strong sibling relationship." Further, because the children are placed with relatives who agreed to maintain sibling contact, adoption of the older children will not substantially interfere with the sibling relationship.

There is substantial evidence to support the trial court's finding that the sibling exception to adoptability was not established.

DISPOSITION

The judgment is affirmed.

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s/Gaut  
J.

We concur:

s/Ramirez  
P. J.

s/King  
J.